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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**

10 RICH HALLMAN, an individual, on
11 behalf of himself and all others
12 similarly situated,

13 Plaintiff,

14 v.

15 WELLS FARGO BANK, N.A.; and
16 DOES 1 through 10, inclusive,
17 Defendant.
18

Case No.

**CLASS AND COLLECTIVE
ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

19 Plaintiff Rich Hallman (“Plaintiff”) is informed and believe, and on that
20 basis allege, as follows:

21 **NATURE OF THE ACTION**

22 1. This is a Washington state-wide class action for failure to pay for rest
23 breaks, overtime, and other labor violations. Defendant Wells Fargo Bank, N.A.’s
24 (“Defendant” or “Wells Fargo”) fails to compensate its mortgage sales force in
25 compliance with Washington law. As more fully described herein, Defendant paid
26 Plaintiff and class members based on a sales commission, and fails to pay them for
27 all for rest breaks, minimum wage, overtime, and vacation pay. Plaintiff seeks
28 among other things, all wages, and statutory remedies.

PARTIES

2. Plaintiff Rich Hallman was, at all relevant times, a resident and citizen of Washington. Plaintiff Hallman was employed by Defendant as a mortgage broker in the State of Washington, during the liability period as alleged herein.

3. Defendant Wells Fargo Bank, N.A. is a bank, that is authorized to conduct and is actually conducting business in the State of Washington, and that designates its main office in South Dakota.

4. Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein under the fictitious names Does 1 through 10, inclusive, and therefore sue such Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named Defendants when their true names and capacities have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

5. Plaintiff is informed and believes and thereon alleges that all Defendants, including the fictitious Doe Defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents, alter egos, partners and/or joint venturers and/or employees of all other Defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent authorization and ratification of their co-Defendant; however, each of these allegations are deemed “alternative” theories whenever not doing so would result in a contradiction with other allegations.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the entire action by virtue of the fact that this is a civil action wherein the matter in controversy, exclusive of interest

1 and costs, exceeds the jurisdictional minimum of the Court. The acts and
2 omissions complained of in this action took place in part in the State of California.
3 At least one Defendant is a citizen of a state outside of California, and federal
4 diversity jurisdiction exists and/or jurisdiction under the Class Action Fairness Act
5 (“CAFA”). The class amount at issue exceeds \$5,000,000 and the jurisdictional
6 minimum of this Court under CAFA. Venue is proper because this is a class
7 action, the acts and/or omissions complained of took place, in whole or in part
8 within the venue of this Court.

9 **FACTUAL ALLEGATIONS**

10 7. Plaintiff and the Class worked as Home Mortgage Consultant, Private
11 Mortgage Banker, Home Mortgage Consultant Jr., and/or Private Mortgage
12 Banker, Jr. (collectively “HMCs”) for Defendant selling mortgages. Defendant
13 paid Plaintiff and Class members based on a sales commission. Plaintiff and Class
14 members received commission based on a percentage, referred to as basis points,
15 for mortgage loan they originated. Class members’ commission is based on the
16 commission rate applied to loan volume for a given month.

17 8. Defendant paid Plaintiff and the Class members advances on
18 commissions at approximately \$12 per hour, but then clawed back the hourly
19 advances from the commissions

20 9. Plaintiff worked for Defendant as an HMC in Everett, Washington,
21 from approximately October 2015 to November 2017.

22 10. Plaintiff and class members were not paid for periods of inactivity
23 during rest breaks because the hourly advance was deducted from class member
24 commissions. Defendant’s pay plan paid failed to compensate for rest breaks, and
25 failed to treat rest breaks as “on the employer’s time,” in violation of Washington
26 Administrative Code §296-126-092(4).

27 11. Because Plaintiff and Class members are paid on a commissions basis,
28 with an advance against commission, they are only paid for sales time, and are not

1 compensated for non-sales activities. The non-sales time Plaintiff and Class
2 members were not compensated for includes, but is not limited to, meetings,
3 assisting customers with non-mortgage related matters, customer surveys,
4 attending open houses, events, and galas, and working on certain nights or
5 weekends. Defendant's failure to compensate Plaintiff and Class members for all
6 time worked violates Revised Code of Washington §49.46.020.

7 12. When Class members worked shifts over eight (8) hours per day, or
8 over forty (40) hours per week, Defendant did not pay them overtime in
9 accordance with law. Among other things, Defendant failed to pay unpaid rest
10 breaks at the overtime rate.

11 13. Plaintiff and Class members are entitled to vacation pay under
12 Defendant's pay plans. Defendant, however, treats vacation pay as an advance
13 against commissions, and claws back the vacation pay through deductions from
14 Plaintiff and Class members' commissions. Defendant, thus, fails to pay Plaintiff
15 and Class members the contractually required vacation pay.

16 14. Defendant's conduct, as alleged herein, has caused Plaintiff and Class
17 members damages including, but not limited to, loss of wages and compensation.

18 15. Plaintiff is informed and believes, and on that basis alleges, that
19 Plaintiff and the Class did not knowingly submit to the wage violations alleged
20 herein. Revised Code of Washington §49.52.070 provides that employers who
21 violate Washington's minimum wage laws under the circumstances present in
22 this case are liable for double the amount of wages improperly withheld.
23 Pursuant to Revised Code of Washington §49.52.080, there exists a presumption
24 of willfulness.

25 16. Plaintiff is a member of and seeks to be the representative for the
26 Class of similarly situated employees who all have been exposed to, have suffered,
27 and/or were permitted to work under, Defendant's unlawful employment practices
28 as alleged herein.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

17. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly situated, and as a member of the Class defined as follows:

All current or former Washington residents who worked for Defendant as HMCs at any time beginning three (3) years prior to the filing of the Complaint through the date notice is mailed to the Class (the “Class period”).

18. Plaintiff reserves the right to amend or otherwise alter the sub-class definitions presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendant or otherwise.

19. This action has been brought and may be properly maintained as a class action pursuant to California Code of Civil Procedure § 382 and other applicable law, as follows:

20. **Numerosity of the Class:** Members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members and their addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

21. **Existence of Predominance of Common Questions of Fact and Law:** Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include:

- a. Whether Defendant’s pay plan fails to compensate for rest break time;
- b. Whether Defendant’s failure to pay for rest break time was willful;
- c. Whether Plaintiff and each member of the Class were not paid minimum wage for non-sales time worked during the Class period;
- d. Whether Defendants failed to pay Plaintiff and Class members for

overtime because with respect to the unpaid rest break time;

e. Whether Defendant failed to pay Plaintiff and Class members for vacation time, also referred to as Paid Time Off.

f. The nature and extent of class-wide injury and the measure of damages for the injury.

22. **Typicality**: Plaintiff's claims are typical of the claims of the members of the subclasses they represent because Plaintiff, as a mortgage consultant for Defendant, was exposed and subjected to the same unlawful business practices as other mortgage salespersons employed by Defendant during the liability period. Plaintiff and the members of the class she represents sustained the same types of damages and losses.

23. **Adequacy**: Plaintiff is an adequate representatives of the Class they seeks to represent because their interests do not conflict with the interests of the members of the subclasses Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to prosecute this action vigorously. The interests of members of each Class will be fairly and adequately protected by Plaintiff and their counsel.

24. **Superiority and Substantial Benefit**: The class action is superior to other available means for the fair and efficient adjudication of Plaintiff and the Class members' claims. The violations of law were committed by Defendant in a uniform manner and class members were exposed to the same unlawful practices. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court

1 system, due to the complex legal and factual issues of the case. By contrast, the
 2 class action device presents far fewer management difficulties, and provides the
 3 benefits of single adjudication, economy of scale, and comprehensive supervision
 4 by a single court.

5 25. The Class should also be certified because:

6 a. The prosecution of separate actions by individual members of the
 7 Class would create a risk of inconsistent or varying adjudications with respect to
 8 individual Class members which would establish incompatible standards of
 9 conduct for Defendant;

10 b. The prosecution of separate actions by individual members of the
 11 Class would create a risk of adjudication with respect to them, which would, as a
 12 practical matter, be dispositive of the interests of the other Class members not
 13 parties to the adjudications, or substantially impair or impede their ability to
 14 protect their interests; and

15 c. Defendant has acted or refused to act on grounds generally applicable
 16 to the Class, and/or the general public, thereby making appropriate final and
 17 injunctive relief with respect to the Classes as a whole.

18 **FIRST CAUSE OF ACTION**
 19 **FAILURE TO PAY REST BREAKS**
 20 **(Against All Defendants)**

21 26. Plaintiff re-alleges and incorporates all preceding paragraphs as if
 22 fully set forth herein.

23 27. Revised Code of Washington §49.12.010 provides that “[t]he welfare
 24 of the state of Washington demands that all employees be protected from
 25 conditions of labor which have a pernicious effect on their health. The state of
 26 Washington, therefore, exercising its police and sovereign power declares that
 27 inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

28 28. Revised Code of Washington §49.12.020 provides that “[i]t shall be

1 unlawful to employ any person in any industry or occupation within the State of
 2 Washington under conditions of labor detrimental to their health.” Under Revised
 3 Code of Washington §49.12.005 and Washington Administrative Code §296-126-
 4 002, conditions of labor “means and includes the conditions of rest . . . periods”
 5 for employees.

6 29. Washington Administrative Code §296-126-092(4) provides as
 7 follows: “Employees shall be allowed a rest period of not less than ten minutes,
 8 on the employer’s time, for each four hours of working time.”

9 30. At all times relevant during the liability period, Defendants willfully
 10 failed and refused, and continues to willfully fail and refuse, to pay Plaintiff and
 11 Class members the amounts owed. Specifically, Defendant claws back all hourly
 12 advances from commission, and thus does not provide paid rest break time. This
 13 conduct violates Washington law as alleged in this cause of action.

14 31. Defendants’ unlawful conduct alleged herein occurred in the course of
 15 employment of Plaintiff and all other similarly situated class member, and
 16 Defendants has done so continuously throughout the filing of this complaint.

17 32. As a direct and proximate result of Defendants’ violation Washington
 18 rest break law, Plaintiff and other Class members have suffered harm and money
 19 damages. Plaintiff, on behalf of themselves and on behalf of the Class, seeks
 20 damages for unpaid rest breaks, at their regular rate of pay, and all other relief
 21 allowable, including all unpaid wages, double damages, and attorneys fees.

22 **SECOND CAUSE OF ACTION**
 23 **FAILURE TO PAY MINIMUM WAGE**
 24 **(Against All Defendants)**

25 33. Plaintiff re-alleges and incorporates all preceding paragraphs as if
 26 fully set forth herein.

27 34. Revised Code of Washington §§49.46.020 and 49.46.120 establish
 28 Washington State’s minimum wage standards.

1 35. Revised Code of Washington §49.46.090 provides: “Any employer
2 who pays any employee less than wages to which such employee is entitled
3 under or by virtue of this chapter, shall be liable to such employee affected
4 for the full amount of such wage rate, less any amount actually paid to such
5 employee by the employer, and for costs and such reasonable attorney's fees
6 as may be allowed by the court.”

7 36. As set forth herein, Defendant failed to compensate Plaintiff and
8 Class members for non-sales time, and thus violated Washington’s minimum
9 wage laws.

10 37. Defendant’s actions alleged herein have violated Washington
11 minimum wage laws, and Defendant is therefore liable to Plaintiff and the
12 Class for actual damages, double damages, and attorneys’ fees and costs, in
13 amounts to be determined at trial.

14
15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PAY OVERTIME**
 (Against All Defendants)

17 38. Plaintiff re-alleges and incorporates all preceding paragraphs as if
18 fully set forth herein.

19 39. Revised Code of Washington §49.46.130 provides that no employer
20 shall employ any employee for a workweek longer than 40 hours unless the
21 employee receives compensation for his employment in excess of the hours above
22 specified at a rate not less than one and half times the regular rate at which he is
23 employed.

24 40. By its action alleged herein, including but not limited to, not paying
25 for overtime associated with unpaid rest breaks, Defendants violated Washington
26 overtime law.

27 41. As a result, Plaintiff and the Class have been deprived of wages
28 and/or compensation, and Defendant is liable for actual damages, double

1 damages, and attorneys' fees and costs, in amounts to be determined at trial.

2 **FOURTH CAUSE OF ACTION**
 3 **WILLFUL REFUSAL TO PAY WAGES**
 4 **(Against All Defendants)**

5 42. Plaintiff re-alleges and incorporates all preceding paragraphs as if
 6 fully set forth herein.

7 43. Defendant's have denied Plaintiff wages and benefits of employment,
 8 including contractual vacation pay, as alleged herein. Defendant's deduction of
 9 Plaintiff's vacation pay for wages results in depriving Plaintiff and Class members
 10 of their vacation pay, in violation of Revised Code of Washington §49.52.050.
 11 Defendant is, therefore, liable to Plaintiff for all such vacation pay and other
 12 improperly deducted or rebated wages or earnings, and double damages, under
 13 Revised Code of Washington §49.52.070.

14 44. Plaintiff and the Class have been deprived of wages and/or
 15 compensation, and Defendant is are liable for actual damages, double damages,
 16 and attorneys' fees and costs, in amounts to be determined at trial.

17 **PRAYER**

18 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
 19 situated and also on behalf of the general public, pray for judgment against
 20 Defendant as follows:

- 21 A. An order that this action may proceed and be maintained as a class
- 22 action;
- 23 B. A declaration Defendant is financially responsible for notifying all
- 24 Class members of its wage and hour violations;
- 25 C. Appoint Plaintiff Hallman as class representative;
- 26 D. Appoint the undersigned as class counsel;
- 27 E. Declare the actions complained of violate Washington law;
- 28 F. Award Plaintiff and the class compensatory damages, including lost

wages;

G. Award Plaintiff and the class damages and/or compensation for unpaid rest breaks;

H. Award Plaintiff and the class all minimum wages owed;

I. Award Plaintiff and the class all overtime wages owed;

J. Award Plaintiff and the class all vacation time owed;

K. Award double damages pursuant to Revised Code of Washington §49.50.050.

L. For all applicable statutory penalties under Washington law;

M. Prejudgment interest at the maximum legal rate;

N. Reasonable attorneys' fees;

O. Accounting of Defendant's records for the liability period;

P. General, special and consequential damages, to the extent allowed by law;

Q. Costs of suit; and

R. Such other relief as the Court may deem just and proper.

DATED: August 14, 2018

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for herself and the Class members on all claims so triable.

DATED: August 14, 2018

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